

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JERRY TAYLOR

Claimant

VS.

COPP TRUCKING, INC.

Respondent

AND

**UNITED STATES FIDELITY &
GUARANTY COMPANY**

Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 172,352

ORDER

Claimant requested review of the Award entered by Assistant Director Brad E. Avery dated March 29, 1996. The Appeals Board heard oral argument on September 10, 1996, in Topeka, Kansas.

APPEARANCES

Claimant appeared by his attorney, Robert E. Tilton of Topeka, Kansas. The respondent and its insurance carrier appeared by their attorney, Ronald J. Laskowski of Topeka, Kansas. The Workers Compensation Fund appeared by its attorney, Derek J. Shafer of Topeka, Kansas.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Assistant Director found that claimant failed to prove he suffered any additional permanent injury or impairment as a result of his June 6, 1992, accident and denied all compensation. Claimant requested review of that Award. The issues now before the Appeals Board are:

- (1) Whether claimant sustained additional injury or disability as a result of the accident.
- (2) The nature and extent of disability, if any.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds:

The Award entered by the Assistant Director should be modified to award claimant temporary total disability benefits previously paid and medical benefits for expenses previously incurred.

The Appeals Board adopts the findings and conclusions of the Assistant Director that claimant failed to prove he sustained additional permanent injury or permanent impairment as a result of the June 6, 1992, work-related accident. Before that accident, claimant had received significant functional impairment ratings as the result of various injuries to his back, right leg, and neck totaling as high as 74.4 percent. Although claimant may have sustained additional injury in the June 1992 accident, the evidentiary record fails to satisfy claimant's burden of proof.

Two of the physicians that treated claimant following the accident in 1992, namely board-certified neurosurgeon Charles Engles, M.D., and orthopedic surgeon T. A. Balan, M.D., indicated claimant did not have any permanent impairment as a result of that accident. Both physicians released claimant to return to work with no restrictions. A third physician, board-certified orthopedic surgeon Phillip L. Baker, M.D., examined claimant in May 1994 and testified that claimant did not sustain additional impairment as a result of the June 1992 accident. Claimant's medical expert, board-certified family practitioner Glen Crowson, M.D., testified that claimant sustained a 34 percent whole body functional impairment as a result of the June 1992 accident. However, the Appeals Board is unable to give much weight, if any, to Dr. Crowson's testimony because he was not aware of the extent of claimant's previous injuries or preexisting impairment.

Based upon the entire record, the Appeals Board finds that claimant has failed to prove he is entitled to receive permanent partial general disability benefits. Therefore, claimant's award should be limited to the 29.14 weeks of temporary total disability benefits previously provided and medical expenses previously incurred.

The Appeals Board adopts the findings of the Assistant Director to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Assistant Director Brad E. Avery dated March 29, 1996, should be, and hereby is, modified; that claimant is denied permanent partial disability benefits but is awarded the temporary total disability benefits previously provided and medical expenses previously incurred.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Jerry Taylor, and against the respondent, Copp Trucking Inc., and its insurance carrier, United States Fidelity & Guaranty Company, for an accidental injury which occurred on June 6, 1992, and based upon an average

weekly wage of \$402.75 for 29.14 weeks of temporary total disability compensation at the rate of \$268.51 per week or \$7,824.38, making a total award of \$7,824.38.

There is presently due and owing claimant 29.14 weeks of temporary total disability compensation at the rate of \$268.51 per week or \$7,824.38, which is ordered paid in one lump sum less any amounts previously paid.

The claimant is also granted an award of medical benefits for those medical expenses previously incurred.

The Assistant Director's order regarding payment of expenses of administration as set forth in the Award is hereby adopted by the Appeals Board as if fully set forth herein.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert E. Tilton, Topeka, KS
Ronald J. Laskowski, Topeka, KS
Derek J. Shafer, Topeka, KS
Brad E. Avery, Assistant Director
Philip S. Harness, Director